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Via Electronic Delivery

February 2, 2004

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Re: Docket No. R-1167, R-1168, R-1169, R-1170, and R-1171
Proposals to revise Regulations B, E, M, Z, and DD to define more specifically the standard for providing "clear and conspicuous" disclosures, and to provide a more uniform standard among the Board's regulations.

Dear Sir or Madam:

KeyCorp ("hereinafter Key"), one of the nation's largest bank-based financial services companies with assets of approximately $81 billion, is pleased to comment on the Board of Governors of the Federal Reserve (the Board) proposal to amend the rules under Regulations B, E, M, Z, and DD. Key companies provide consumer finance, investment management, retail and commercial banking, retirement, and investment banking products and services to individuals and companies throughout the United States and, for certain businesses, internationally. Key has a presence from Maine to Alaska, and we deliver products and services through a network of KeyCenters (branches), ATMs, affiliate offices, telephone banking centers and a website, Key.com®.

Key is committed to helping consumers better understand the financial process and we applaud the Board's efforts in revamping the rules to simplify the process. However, the proposals, as currently written, would be extremely costly to the industry and present additional risks, while not necessarily achieving the Board's stated goals. Therefore, Key recommends that the Board withdraw the proposals.

The proposed rule would change disclosure requirements for five consumer regulations and would be very costly to the industry. The proposal takes the "clear and conspicuous" standard from Regulation P (where it currently applies to Privacy Notices) and applies it to five other consumer disclosure rules (Regulations B, E, M, Z, and DD); each of the regulations currently has a slightly different variation on the same principle that all disclosures should be clear and conspicuous. The Board alleges no evidence of any problem with these existing requirements, and Key agrees that there are no current problems. Key respectfully disagrees that adopting the Regulation P standard for all the regulations would create consistency that would be beneficial to the industry. On the contrary, we believe it would be of no benefit, and would result in great cost to financial institutions.

As proposed, all the regulations would employ the definition of "clear and conspicuous" found in Regulation P, which is that notices must be "reasonably understandable and designed to call

attention to the nature and significance of the information." The proposals list illustrations of what it would mean to be clear and conspicuous. Examples of a reasonably understandable disclosure include: "clear, concise sentences, paragraphs, and sections"; "short explanatory sentences or bullet lists"; "definite, concrete, everyday words"; and the avoidance of legal and highly technical business terminology."

Examples of ways to call attention to the nature and significance of the information include the use of a plain-language heading; the use of easy-to-read type size ("Disclosures in 12-point type," it says, "generally meet this standard"); wide margins and ample spacing; and boldface or italics for key words. When combining disclosures with other information, one should use "distinctive type size, style, and graphic devices, such as shading or sidebars." While these examples are not mandatory, they would be evidence of clear and conspicuous disclosures.

The problems with the proposal include the following:

- The change would call for a review and rewrite of vast numbers of documents. Changes in longstanding and well-understood disclosure requirements will force institutions to undertake a complete review of affected documents and make appropriate changes to ensure compliance. A vast number of the retail forms in use today include some notice or disclosure mandated by these regulations. The re-examination of all the forms and the resulting changes, wherever necessary, will entail billions of dollars in compliance cost to the industry.

- The changes would result in frivolous litigation and unnecessary compliance expense. The proposed requirements call for a subjective determination of whether disclosures are "reasonably understandable" and "designed to call attention to their nature and significance." The potential for litigation here is huge. Regulation P provides for no private right of action; a violation would not result in a lawsuit. But by extending this definition to other consumer regulations with such rights, the Fed is subjecting the industry to considerable liability risk. Even if the industry wins the majority of cases, the cost of litigating or settling would be excessive. Examiners will also be making subjective determinations under the new standard, resulting in increased compliance costs and burdens.

- The Regulation P standard is not applicable to the other regulations. Under Regulation P, the privacy notices are often provided in a single format that requires little alteration. However, the other regulations require many different forms of disclosures that apply in myriad situations. The format requirements for each are unique, making some of the illustrative examples challenging, if not impossible to comply with. For example, technical terminology and long sentences are often necessary to convey technical information. Wide margins and ample spacing in some disclosures would result in significantly longer documents, which would be harder to read and more costly to produce. Expanding disclosures to 12-point type would increase the cost of producing documents and require rewrites of all forms. Most importantly, disclosures that can be integrated into contracts (such as much of what is required under Regulation M, open-end disclosures under Regulation Z, and disclosures required by Regulations E and DD) would result in a hodge-podge of highlighted information interspersed with contract terms; it would be impossible to know for certain where highlighted disclosures ought to end and contract terms begin.

In short, this change would call for a costly review and rewrite of every contract containing disclosures, with no guarantee that the final product could avoid liability under the new standard. For the forgoing reasons, Key respectfully urges the Board to withdraw the proposals.

We thank the Board for the opportunity to provide our thoughts and comments on the proposed rules. If you have any questions regarding our comments, please do not hesitate to contact me at (216) 689-5950.

Sincerely,

Cheryl A. Voigt
Chief Compliance Officer
KeyCorp